



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 30, 1993

Ms. Elaine S. Brown
Temporary Assistant City Attorney
Legal Department
City of Victoria
P.O. Box 1758
Victoria, Texas 77902-1758

OR93-734

Dear Ms. Brown:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former V.T.C.S. article 6252-17a).¹ Your request was assigned ID# 22339.

The Children's Protective Services referred an allegation that a father physically abused one of his children to the City of Victoria Police Department (the "department") for investigation. After the department concluded its investigation, it referred the matter to the district attorney, who declined to accept charges on the case; consequently, the department now considers the case closed. The mother of the allegedly abused child now seeks a copy of the department's records of its investigation. You contend that section 34.08 of the Family Code makes the requested records confidential and therefore the department must withhold them from the requestor pursuant to section 552.101 of the Open Records Act.

Section 552.101 of the act protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Chapter 34 of the Family Code concerns reports of, *inter alia*, physical abuse of a child to local law enforcement agencies. See Fam. Code § 34.012(1)(C). Section 34.08(a) of the Family Code provides:

¹The Seventy-Third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46, at 988. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

Except as provided in Subsections (b) and (c) of this section, the reports, records, and working papers used or developed in an investigation made under this chapter are confidential and may be disclosed only for purposes consistent with the purposes of this code under regulations adopted by the investigating agency.

Subsections (b) and (c) relate to the disclosure of records concerning an investigation of an adopted child to the adoptive parents, prospective adoptive parents, or to the child upon reaching adulthood. Neither subsection is applicable to the current request.

Because you have not cited any specific regulation that the department has adopted with regard to the release of this type of information, we assume that no such rule exists. Given that assumption, the records at issue are confidential pursuant to section 34.08(a) of the Family Code. See Open Records Decision No. 440 (1986) at 2.

We further note that although the requestor is the mother of the allegedly abused child, she does not have a special right of access to these records under section 552.023 of the Government Code, which provides in pertinent part:

A governmental body may not deny access to information to the person, or the person's representative, to whom the information relates on the grounds that the information is considered confidential by privacy principles under this chapter but may assert as grounds for denial of access other provisions of this chapter *or other law that are not intended to protect the person's privacy interests.*

Gov't Code § 552.023(b) (emphasis added). In Open Records Decision No. 587 (1991) at 3-4 (copy enclosed) this office held that because section 34.08 is intended to protect interests other than the privacy of those to whom the records relate, those parties do not have a special right of access to the records under the predecessor statute of section 552.023. Accordingly, the department may not release these records to the requestor.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



KyMBERLY K. Oltrogge
Assistant Attorney General
Open Government Section

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Ref.: ID# 22339

Enclosures: Submitted documents
Open Records Decision No. 587

cc: Ms. Sharon Morgan
Route 1, Box 2
Groveton, Texas 75845
(w/o enclosures)